

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Sears Logistics Services, Inc., :
Plaintiff, : Case No. 2:14-cv-999
v. :
Phoenix Warehouse, : JUDGE MICHAEL H. WATSON
Magistrate Judge Kemp
Defendant. :

MEMORANDUM OF
FIRST PRETRIAL CONFERENCE

This matter came before the Court on November 25, 2014 at 1:30 p.m. at the First Pretrial Conference pursuant to notice and in accordance with Rule 16 of the Federal Rules of Civil Procedure. Counsel appeared as follows:

For the Plaintiff:

Gregory P. Matthews
Charles F. Ticknor, III

For the Defendant:

Edward G. Hubbard

The following matters were considered:

A. VENUE AND JURISDICTION

There are no contested venue or jurisdictional issues.

B. PARTIES AND PLEADINGS

Plaintiff may ask for leave to amend if the complaint is not dismissed with prejudice as a result of a ruling on the pending motion to dismiss.

C. MOTIONS

A motion to dismiss is pending and is fully briefed.

D. ISSUES

This is a state law case. Plaintiff seeks restitution under a theory of either money had and received, or unjust enrichment, as to what it claims to have been rental payments made by mistake.

Defendant has moved to dismiss.

E. DISCOVERY PROCEDURES

All discovery shall be completed by July 31, 2015. For purposes of complying with this order, all parties shall schedule their discovery in such a way as to require all responses to discovery to be served prior to the cut-off date, and shall file any motions relating to discovery within the discovery period unless it is impossible or impractical to do so.

Any motions for summary judgment shall be filed by August 28, 2015.

F. EXPERT TESTIMONY

If plaintiff seeks to establish a matter affirmatively through the use of expert testimony, it shall identify such expert by June 1, 2015. That identification shall be by way of the disclosures required by Fed. R. Civ. P. 26(a)(2), which reads in full:

Witnesses Who Must Provide a Written Report. Unless otherwise stipulated or ordered by the court, this disclosure must be accompanied by a written report--prepared and signed by the witness--if the witness is one retained or specially employed to provide expert testimony in the case or one whose duties as

the party's employee regularly involve giving expert testimony. The report must contain:

(i) a complete statement of all opinions the witness will express and the basis and reasons for them;

(ii) the facts or data considered by the witness in forming them;

(iii) any exhibits that will be used to summarize or support them;

(iv) the witness's qualifications, including a list of all publications authored in the previous 10 years;

(v) a list of all other cases in which, during the previous 4 years, the witness testified as an expert at trial or by deposition; and

(vi) a statement of the compensation to be paid for the study and testimony in the case.

If defendant intends to use expert testimony directed to the same subject matter, it shall identify, in the same manner, such expert by July 1, 2015.

Pursuant to Fed. R. Civ. P. 26(b)(4)(A), leave of court is not required in order to depose a testifying expert.

G. SETTLEMENT

The parties shall make a good faith effort to settle this case. This case will be referred to an attorney mediator, or to the Magistrate Judge, for a settlement conference during this Court's March, 2015 settlement week. In order for the conference to be meaningful, all discovery that may affect the parties' ability to evaluate this case for settlement purposes must be completed prior to the beginning of settlement week. The parties will also be expected to comply fully with the settlement

week orders which require, inter alia, that settlement demands and offers be exchanged prior to the conference and that principals of the parties attend the conference.

H. OTHER MATTERS

None.

If the foregoing does not accurately record the matters considered and the agreements reached at the conference, counsel will please immediately make their objection in writing. If any date set in this order falls on a Saturday, Sunday or legal holiday, the date is automatically deemed to be the next regular business day.

/s/ Terence P. Kemp
United States Magistrate Judge